

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**In the Matter of: GOJET AIRLINES, LLC**

FAA Order No. 2012-5

Docket No. CP10CE0003  
FDMS No. FAA-2010-0025<sup>1</sup>

Served: May 22, 2012

**DECISION AND ORDER**<sup>2</sup>

**I. Introduction**

Respondent GoJet Airlines, LLC (GoJet) has appealed the written initial decision of Administrative Law Judge (ALJ) Richard C. Goodwin.<sup>3</sup> The ALJ found that GoJet, an air carrier that operates under 14 C.F.R. Part 121, violated:

- 14 C.F.R. § 43.13(c), by failing to follow the procedures in its maintenance manual;<sup>4</sup>

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<sup>1</sup> Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at the following Internet address: [www.regulations.gov](http://www.regulations.gov).

<sup>2</sup> The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: [www.faa.gov/about/office\\_org/headquarters\\_offices/agc/pol\\_adjudication/AGC400/Civil\\_Penalty](http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty). In addition, Thomson Reuters/West Publishing publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

<sup>3</sup> A copy of the ALJ's initial decision is attached.

<sup>4</sup> Section 43.13 "Performance rules (general)" provides as follows:

(a) Each person performing maintenance ... on an aircraft ... shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator ....

(b)...

(c) Special provisions for holders of air carrier operating certificates .... Unless otherwise notified by the administrator, the methods, techniques, and practices contained in the maintenance manual or the maintenance part of the manual of the

- 14 C.F.R. § 121.153(a)(2),<sup>5</sup> by operating an unairworthy aircraft; and
- 14 C.F.R. § 91.13(a),<sup>6</sup> by operating an aircraft carelessly so as to endanger the life or property of another.

The ALJ found that once Complainant Federal Aviation Administration established that the operation was unairworthy, the violation of Section 91.13(a) followed as a residual violation, because there was no independent event on which the violation of Section 91.13(a) was based.<sup>7</sup>

GoJet's affirmative defense was that this case was subject to dismissal under the FAA's Voluntary Disclosure Reporting Program (VDRP).<sup>8</sup> Under the VDRP, regulated entities may receive only a letter of correction for a violation they voluntarily disclose to the FAA if they propose and implement a comprehensive fix that satisfies the FAA's requirements. Here, however, the FAA determined that GoJet's corrective fix was

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holder of an air carrier operating certificate ... constitute acceptable means of compliance with this section.

<sup>5</sup> 14 C.F.R. § 121.153 provides:

- (a) [N]o certificate holder may operate an aircraft unless that aircraft—
  - (1) ...
  - (2) Is in an airworthy condition and meets the applicable airworthiness requirements of this chapter ....

<sup>6</sup> Section 91.13, entitled "Careless or reckless operation," provides as follows:

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>7</sup> GoJet has asked for oral argument. (Appeal Brief at 2.) Oral argument, however, is not necessary for proper disposition of this appeal.

<sup>8</sup> At the time of the events in question, information regarding the VDRP was contained in FAA Order No. 8900.1, Volume 11, Chapter 1, Chg 0 (September 13, 2007) (Exhibit A-10) and FAA Advisory Circular No. 00-58A, Voluntary Disclosure Reporting Program (September 8, 2006) (Exhibit A-11). AC 00-58A was canceled on April 29, 2009, and replaced by AC 00-58B, Voluntary Disclosure Reporting Program.

inadequate, and the FAA gave GoJet the opportunity either to accept the FAA's corrective fix or to propose another corrective fix that would prevent a recurrence of the violations. When GoJet did neither of these things, the FAA rejected GoJet's VDRP submission and initiated the instant enforcement action. GoJet argued that the FAA's rescission of its acceptance of GoJet's voluntary disclosure under the VDRP violated the FAA's own published guidance and procedures and therefore was arbitrary and capricious.

The ALJ rejected GoJet's affirmative defense. He stated that the VDRP makes clear that the regulated entity's fix must be satisfactory to the agency, and GoJet had refused to take the steps that the agency required. The ALJ assessed a civil penalty of \$18,000, rather than the \$33,000 civil penalty proposed by Complainant. This order affirms the ALJ's decision.

## **II. Background**

### **A. Facts**

On November 26, 2007, GoJet mechanics replaced a worn brake assembly on one of GoJet's Canadair CRJ-700 aircraft (N151GJ). (Exhibit A-1; Tr. 28, 38.) To remove the brake, it was necessary to jack the main landing gear. (Tr. 32.) As part of jacking the main landing gear, a mechanic had to install landing gear pins (also known as gear pins or lock pins). (Exhibits A-2 & A-3; Tr. 32-33, 38.) The mechanic installed the pins, but failed to comply with the instruction in GoJet's General Maintenance Manual (GMM) to make the following logbook entry: "Landing gear pins installed, remove before flight." (Exhibit A-4; Tr. 34, 35, 70, 117-118.) The mechanic told FAA Principal Maintenance Inspector (PMI) Gary Cooper that he knew of the requirement, but simply forgot.

(Tr. 70-71.) After the brake was replaced, each of the three gear pins was supposed to be removed, but the mechanic failed to remove one of the pins (Tr. 73-74, 90, 117), and he did not make the required logbook entry, per the GMM, that he had removed the gear pins (Exhibit A-4).

GoJet returned the aircraft to service on the same day with the gear pin still installed. (Exhibit A-1, Tr. 28.) After the plane took off, the gear would not retract – because the gear pin was installed – and a warning message occurred, forcing GoJet to abort the flight. (Exhibits A-1 & A-5.) The inspector testified that he did not know if, when the aircraft returned to the airport of departure, it was overweight (Tr. 93) due to landing with more fuel than usual (Tr. 29).<sup>9</sup> Inspector Cooper testified that the aircraft could fly legally with gear pins installed utilizing the Minimum Equipment List (MEL) appropriately. (Tr. 91.)<sup>10</sup> The MEL was not used in this case. (Tr. 122.)

GoJet maintenance workers inspected the aircraft after it returned to the airport, and found and removed the gear pin. (Exhibits A-1 & A-5.) Later that same day, GoJet submitted an initial notification of the apparent violations to the FAA using the FAA’s web-based VDRP. (Exhibits A-5, A-7; Tr. 36, 114.)

## **B. Voluntary Disclosure Reporting Program (VDRP), Generally**

At the time of the events in question, information concerning the VDRP was in

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<sup>9</sup> The record does not show whether the aircraft was overweight at landing or whether it actually landed with more fuel than was normal.

<sup>10</sup> Using the MEL appropriately includes making a log entry of the inoperable equipment prior to the flight. See the Master Minimum Equipment List (MMEL), Bombardier CL-600-2C10 (Regional Jet Series 700) (Rev. 2; June 14, 1989), stating that “[w]hen an item of equipment is discovered to be inoperative, it is reported by making an entry in the Aircraft Maintenance Record/Logbook ... [s]uch documentation is required *prior* to operation with any item of equipment inoperative.” The MMEL is found at the following address: <http://fsims.faa.gov/wdocs/mmel/cl-600%20rev%208a.htm>.

FAA Order No. 8900.1 (Exhibit A-10) and FAA Advisory Circular (AC) No. 00-58A (Exhibit A-11). Under the VDRP, the FAA may, under certain conditions, issue a letter of correction to certain regulated entities, including Part 121 air carriers, in lieu of taking civil penalty action for covered instances of noncompliance that the entity voluntarily discloses to the FAA. (FAA Order No. 8900.1 ¶ 11-5, Exhibit A-10 at 2; AC 00-58A ¶ 6, Exhibit A-11 at 2.) The VDRP is based on the FAA’s policy that the “open sharing of apparent violations and a cooperative as well as an advisory approach to solving problems will enhance and promote aviation safety.” (*Id.*)

For an apparent violation to be covered, the following conditions must be met:

1. The entity must have notified the FAA of the apparent violation immediately after detecting it and before the agency has learned about it by other means;
2. The apparent violation must have been inadvertent;
3. The apparent violation must not indicate a lack or reasonable question of the entity’s qualification;
4. Immediate action, satisfactory to the FAA, must have been taken upon discovery to terminate the conduct that resulted in the apparent violation; and
5. The entity must have developed or must be developing a comprehensive fix and schedule of implementation satisfactory to the FAA.

(FAA Order No. 8900.1 at ¶ 11-5.A, Exhibit A-10 at 2; AC 00-58 ¶ 6.a, Exhibit A-11 at 2.) A comprehensive fix is “an action, or actions, proposed by [the regulated entity] to preclude recurrences of the apparent violation ....” (FAA Order No. 8900.1 ¶ 11-4.B.1, Exhibit A-10 at 1; AC 00-58 ¶ 5.b.1, Exhibit A-11 at 1.)

The first VDRP phase is initial notification to the Principal Inspector (PI),<sup>11</sup> and it

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<sup>11</sup> The VDRP defines the PI as “the appropriate maintenance, avionics, operations inspector, or other designated FAA official of the program office responsible for oversight of the area of noncompliance involved in the disclosure.” (Order 8900.1 at ¶ 11-4.D, Exhibit A-10 at 1; AC 00-58 ¶ 5.b, Exhibit A-11 at 1.) In this case, the PI was the PMI, Inspector Cooper.

must ordinarily take place within 24 hours of discovery of the apparent violation. (FAA Order No. 8900.1 at ¶ 11-6.A, Exhibit A-10 at 3-4; AC 00-58 ¶ 7.b, Exhibit A-11 at 3-4.)

Initial notification must include, among other things:

1. A brief description of the apparent violation.
2. Verification that noncompliance stopped after it was identified.
3. A description of the immediate action taken after the apparent violation was identified.
4. Verification that an evaluation is underway to determine if there are any systemic problems and a description of the corrective steps necessary to prevent the apparent violation from recurring.

*(Id.)*

The second phase is the FAA’s response to the regulated entity. (FAA Order No. 8900.1 at ¶ 11-7, Exhibit A-10 at 4-5; AC 00-58 ¶ 8, Exhibit A-11 at 4.) In this phase, the PI acknowledges the regulated entity’s initial notification and asks the entity to submit a written report. *(Id.)* In addition, according to the guidance, “[t]he PI will open an EIR (Enforcement Investigative Report) that will be closed out with a letter of correction “after satisfactory development of a comprehensive fix and schedule of implementation agreed upon by the FAA and the entity.” *(Id.)*

The third phase is the entity’s written report. The written report should include a detailed description of the proposed comprehensive fix, among other things. (FAA Order No. 8900.1 at ¶ 11-8, Exhibit A-10 at 5; AC 00-58 ¶ 9, Exhibit A-11 at 5.)

The fourth phase is the FAA’s review of the written report. The FAA “works with [the entity] to ensure that the regulated entity has identified any root causes and systemic issues that led to the apparent violation.” (FAA Order No. 8900.1 at ¶ 11-9, Exhibit A-10 at 6; AC 00-58 ¶ 10, Exhibit A-11 at 5.) This collaboration helps “ensure

that the corrective actions contained in the comprehensive fix are acceptable to the FAA.”  
(*Id.*)

The fifth phase involves implementation of a comprehensive fix by the regulated entity and surveillance by the FAA. (FAA Order No. 8900.1 at ¶ 11-10.A, Exhibit A-10 at 6; AC 00-58 ¶ 11, Exhibit A-11 at 5.) During implementation, according to FAA guidance, the FAA and the entity “should continue to work together,” and “changes will be made to the proposed comprehensive fix when the need is identified.” (*Id.*) The PI will issue a letter of correction upon determining that the initial implementation is satisfactory. (*Id.*) “If ... the FAA determines that the steps taken by the entity are not those documented in the comprehensive fix, the letter of correction may be rescinded ... and enforcement action may be taken.” (*Id.*)

The sixth phase is inspector signoff. (FAA Order No. 8900.1 at ¶ 11-11, Exhibit A-10 at 7; AC 00-58 ¶ 12, Exhibit A-11 at 6.) At the end of the implementation period, the PI makes a final assessment and “if all elements of the comprehensive fix have been accomplished adequately, the PI finds the fix satisfactory and closes the case.” (*Id.*) However, “[t]he case remains subject to reopening in the event that the agreed-upon actions, outlined in the comprehensive fix, are not completed to the satisfaction of the FAA.” (*Id.*)

If there is a dispute “regarding the acceptance of a proposed comprehensive fix, or a modification thereto before the fix is considered satisfactory,” the PI and the entity “may request that the issue be resolved at the next level of management within the FAA” to obtain “an independent assessment of the areas in disagreement.” (FAA Order 8900.1 at ¶ 11-12, Exhibit A-10 at 7; AC 00-58 ¶ 13, Exhibit A-11 at 6.)

### **C. VDRP in this Matter**

On November 26, 2007, GoJet submitted its initial notification to the agency through the web-based VDRP. (Exhibit A-5 at 1.) On November 29, 2007, Inspector Cooper initially accepted GoJet's filing as a voluntary disclosure. (Exhibit A-5 at 2; Tr. 38.) GoJet entered its written report into the web-based VDRP on December 10, 2007. (Exhibit A-5 at 2; Tr. 38-39.) Under "Comprehensive Fix Proposal," GoJet wrote:

The mechanic was counseled on the mandatory procedures outlined in the General Maintenance Manual that requires you to make an entry in the Aircraft Maintenance Flight Logbook stating "Landing gear pin installed, remove before flight."

(Exhibit A-5 at 4; Tr. 45.) In his written report review submitted on January 24, 2008, Inspector Cooper indicated that GoJet needed to provide further information. (Exhibit A-5 at 4; Tr. 57.) Regarding a comprehensive fix, he wrote that:

The proposed comprehensive fix does not preclude recurrence of this violation. The mechanic involved knew of the GMM [General Maintenance Manual] requirement to make a logbook entry stating the landing gear pin was installed prior to this incident and yet still forgot to make the entry. Counseling (reminding) the mechanic of the GMM requirement does not meet the guidance in FAA Order No. 8900.1, Volume 11, Chapter 1, paragraph 11-4. The comprehensive fix should prevent the same mechanic, or any other mechanic, from forgetting to make the logbook entry and subsequently forgetting to remove the gear pins following maintenance again.

(Exhibit A-5 at 5.)

On January 25, 2008, Inspector Cooper sent GoJet a letter requesting further information, restating the problems with GoJet's proposed comprehensive fix, and advising GoJet that a comprehensive fix needed to be established by February 8, 2008.

(Exhibit A-6.) Inspector Cooper warned GoJet that:

[f]ailure to provide a comprehensive fix acceptable to this office by the close of business on February 8, 2008 will result in the self-disclosures



being closed out of the web-based VDRP system and processed as enforcements utilizing FAA Order No. 2150.3A.

(*Id.*) Two levels of supervisors signed off on Inspector Cooper's letter. (Tr. 62; Exhibit A-7.) Inspector Cooper's immediate supervisor, Dean Adam, Supervisor of the FAA's GoJet Certificate Management Unit, testified that no one from GoJet asked him to review or handle the dispute regarding the comprehensive fix in this matter. (Tr. 103.) GoJet's Chief Inspector, Jeffrey Craig, admitted that he received Inspector Cooper's letter but that he never got back to the inspector with a better comprehensive fix. (Tr. 125.)

Inspector Cooper testified that the GMM is not carried out to the aircraft by the mechanics. (Tr. 76.) Instead, they carry out to the aircraft another manual that includes specific tasks like changing the brake. (*Id.*) In this case, Inspector Cooper proposed to GoJet that it add to the latter manual another step that would remind the mechanic to remove the gear pins. (Tr. 75-76.) GoJet, however, did not want to do it. (Tr. 46.) Inspector Cooper testified that if GoJet had offered a different fix that would have precluded recurrence of the violations, it would have been satisfactory to him. (*Id.*)

Inspector Cooper testified that eventually the agency came to believe that GoJet did not want to do anything else other than counsel the one mechanic; GoJet's Chief Inspector so informed him. (Tr. 39, 50.) On May 1, 2008, Inspector Cooper sent GoJet's Chief Operating Officer, Richard Leach, a letter informing him that the landing gear pin self-disclosure item had been rescinded/closed out in the VDRP system on February 15, 2008, and was being processed using the traditional enforcement methods in FAA Order No. 2150.3B, entitled "Compliance and Enforcement Program." (Exhibit A-7 at 4.) GoJet had not provided the additional requested information or a comprehensive fix that was satisfactory to the FAA. (Tr. 48, 57.) Inspector Cooper testified that no one from

GoJet ever asked him or anyone else to take this dispute to the next level within the FAA. (Tr. 52.)

**D. ALJ's Decision**

After a hearing, the ALJ issued a written initial decision in which he found that GoJet had violated the regulations, as alleged, rejected GoJet's affirmative defense, and assessed an \$18,000 civil penalty. (Initial Decision at 1.) The ALJ found that GoJet violated 14 C.F.R. § 43.13(c) by failing to follow the procedures in its GMM when replacing the brake assembly. (*Id.* at 5.)

The ALJ found that GoJet violated 14 C.F.R. § 121.153(a)(2), which prohibits operating an unairworthy aircraft. (*Id.*) He found that the testimony showed that the aircraft risked returning from flight with a greater amount of fuel than normal, and that landing overweight leads to an unreasonable risk of an accident. (Tr. 29.) Thus, the ALJ determined, the aircraft was not in a condition for safe operation or airworthy.

The ALJ found a violation of 14 C.F.R. § 91.13(a), which prohibits careless or reckless operation of an aircraft. (Initial Decision at 5.) He wrote that a violation of Section 91.13(a) follows as a residual violation once Complainant has established an unairworthy operation. In this case, he wrote, the aircraft operation after the flawed repair was careless. (*Id.*)

GoJet's affirmative defense, as stated above, was that the FAA's rescission of its acceptance of GoJet's voluntary disclosure violated the FAA's own published guidance and was therefore arbitrary and capricious. The ALJ found that the standard of review of the agency's rescission and its initiation of the instant civil penalty action was the "arbitrary and capricious" standard. (Initial Decision at 6.) The ALJ relied on cases in

which FAA decisions were overturned as arbitrary and capricious because the agency had ignored its own handbooks. *D & F Alfonso Realty Trust v. Garvey*, 216 F.3d 1191, 1196-97 (D.C. Cir. 2000); *BFI Waste Systems of North America v. FAA*, 293 F.3d 527, 533 (D.C. Cir. 2002).

The ALJ wrote that FAA Order No. 8900.1 states unequivocally that the comprehensive fix must be satisfactory to the FAA. (Initial Decision at 6.) Further, the agency may rescind its acceptance if it is not satisfied with the fix even after it has issued a letter of correction. (*Id.* at 7.) The ALJ rejected GoJet's suggestion that the agency and the regulated entity must produce a "mutually agreeable comprehensive fix." Instead, the ALJ wrote, the VDRP expressly permits the FAA to impose a solution unilaterally. (*Id.* at n.6.)

Here, the ALJ found, GoJet refused to offer and implement a comprehensive fix that was satisfactory to the FAA. Inspector Cooper offered a comprehensive fix, which would add a procedure in the maintenance manual requiring removing the gear pins after replacing a brake, but GoJet refused it. (Initial Decision at 6 n.4.) The agency followed its own procedures. (Initial Decision at 7.) For these reasons, the ALJ concluded that the FAA's ultimate decision to reject GoJet's VDRP submission and to institute enforcement action was not arbitrary and capricious. (*Id.*) The ALJ concluded that GoJet failed to prove its affirmative defense.

The ALJ rejected Complainant's proposed civil penalty of \$33,000 and assessed an \$18,000 civil penalty instead. (Initial Decision at 8.) The ALJ stated that GoJet's failure to remove a gear pin produced an unairworthy aircraft and created a substantial risk of danger to the crew and passengers. Also, he wrote, GoJet's failure to make a

required log entry on two occasions undermined the recordkeeping system that is so essential to FAA oversight.

The ALJ found no reason to assess a separate civil penalty for the violation of Section 91.13(a) because it was strictly a residual violation. The ALJ could find no justification for assessing a maximum civil penalty of \$11,000 for each of the two remaining violations, as Complainant had proposed. While Complainant asserted that maintenance compliance is a “systemic problem” at GoJet (Tr. 95-96), the ALJ found that Complainant furnished no evidence of that. (Initial Decision at 9.) The ALJ found that a civil penalty assessment of \$18,000, or \$9,000 per independent violation found, was appropriate.

### **III. Discussion**

On appeal, GoJet argues that the ALJ erred in:

- finding that it violated 14 C.F.R. § 121.153(a)(2), which prohibits operating an unairworthy aircraft.
- finding that it committed a residual violation of 14 C.F.R. § 91.13(a), which prohibits careless or reckless operation of an aircraft.
- failing to find that GoJet proved its affirmative defense that the FAA was arbitrary and capricious when it rejected GoJet’s voluntary disclosure and instituted this enforcement action.<sup>12</sup>

Under the Rules of Practice, the Administrator considers on appeal whether the ALJ’s findings of fact are supported by a preponderance of reliable, probative, and substantial evidence. 14 C.F.R. § 13.233(b)(1). The Administrator also considers whether the ALJ’s conclusions of law are in accordance with applicable law, precedent,

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<sup>12</sup> GoJet does not contest the ALJ’s finding of a violation of 14 C.F.R. § 43.13(c), which required GoJet to follow the procedures in its maintenance manual.

Complainant requested a \$33,000 sanction in its complaint but chose not to appeal the \$18,000 sanction assessed by the ALJ.

and public policy. 14 C.F.R. § 13.233(b)(2). Finally, the Administrator considers whether the ALJ committed prejudicial errors during the hearing or proceedings.

14 C.F.R. § 13.233(b)(3).

**A. Alleged Violation of 14 C.F.R. § 121.153(a)(2)**

GoJet argues that it did *not* fly an unairworthy aircraft in violation of 14 C.F.R. § 121.153(a)(2). It asserts that the testimony of FAA Inspector Cooper and GoJet Chief Inspector Craig was that GoJet could operate the aircraft safely with gear pins installed, and there was no evidence that the aircraft was unsafe.

Section 121.153 provides:

(a) [N]o certificate holder may operate an aircraft unless that aircraft—

...

(2) Is in an airworthy condition and meets the applicable airworthiness requirements of this chapter ....

The Administrator has held that to be airworthy, an aircraft must satisfy both prongs of the following two-pronged test: (1) the aircraft must conform to its type design approved under a type certificate or supplemental type certificate and to applicable airworthiness directives; and (2) it must be in a condition for safe operation. *See, e.g., Whitley*, FAA Order No. 2009-4 at 12 (January 14, 2009), quoting *Kilrain*, FAA Order No. 1996-18 at 10 (May 3, 1996), *petition for reconsideration denied*, FAA Order No. 1996-23 (August 13, 1996), *petition for review denied*, *Kilrain v. FAA*, No. 96-3587 (3<sup>rd</sup> Cir. May 1, 1997). To be airworthy, an aircraft must be more than simply “flyable.” *Whitley*, FAA Order No. 2009-4 at 13, citing *Copsey v. NTSB*, 993 F.2d 736, 739 (10<sup>th</sup> Cir. 1993); *US Air*, FAA Order No. 1996-25 at 13 (August 12, 1996).

The regulations provide that “[a]n approved [MEL], as authorized by the

operations specifications, constitutes an approved change to the type design without requiring recertification.” 14 C.F.R. § 121.628(a)(2). The regulations require that the records identifying the inoperable instruments and equipment be available to the pilot and that the airplane be operated under all applicable conditions and limitations contained in the MEL and the operations specifications authorizing use of the MEL. 14 C.F.R. § 121.628(a)(4) and (5).

According to the preamble to the applicable Master Minimum Equipment List (MMEL), the following procedures must be followed before operation with inoperable equipment:

When an item of equipment is discovered to be inoperative, it is reported by making an entry in the Aircraft Maintenance Record/Logbook as prescribed by FAR [Federal Aviation Regulations]. The item is then either repaired or may be deferred per the MEL or other approved means acceptable to the Administrator prior to further operation. ... When these requirements are met, an Airworthiness Release, Aircraft Maintenance Record/Logbook entry, or other approved documentation is issued as prescribed by FAR. Such documentation is required *prior* to operation with any item of equipment inoperative.

Preamble, MMEL, Bombardier CL-600-2C10 (Rev. 2; June 14, 1989) (emphasis added).<sup>13</sup>

In this case, GoJet operated the aircraft with a gear pin installed (and landing gear inoperative) but did not follow any MEL procedures. Consequently, the aircraft failed the first prong of the airworthiness test because the original type design required all landing gear to be operative. Hence, the aircraft was unairworthy. It is not necessary to address the second prong of the airworthiness test – *i.e.*, whether the aircraft was in an unsafe condition – because it has been found already that the aircraft did not conform to

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<sup>13</sup> The MMEL is found at the following address: <http://fsims.faa.gov/wdocs/mmel/cl-600%20rev%208a.htm>.

its type design. *See Emery Worldwide Airlines*, FAA Order No. 1997-30 at 19 (October 8, 1997) (“[i]n light of the previous finding that the aircraft was operated when it did not conform to its type design, a violation of Section 121.153(a)(2) already has been established”).

**B. Alleged Violation of 14 C.F.R. § 91.13(a)**

Once the agency shows that a respondent has operated an unairworthy aircraft, then careless or reckless operation of an aircraft, a violation of Section 91.13(a), follows as a residual violation, unless extraordinary circumstances are present. *Ace Pilot Training*, FAA Order No. 2005-12 (August 15, 2005), quoting *USAir, Inc.*, FAA Order No. 1992-70 at 6 (December 21, 1992). As discussed in the section above, the agency established operation of an unairworthy aircraft by showing that GoJet operated its aircraft with inoperable equipment but not under the MEL.

GoJet argues that one of the agency’s own witnesses (Inspector Cooper) testified that the airplane flying with the gear pin installed was not unairworthy, but was simply subject to restrictions. This is a mischaracterization of Inspector Cooper’s testimony. He actually testified that if the aircraft were flown with gear pins installed and MEL restrictions were not followed on the flight, as in the instant case, then the aircraft would not be airworthy. (Tr. 29-30.)

GoJet argues that its own witness, Chief Inspector Craig, testified that the aircraft can be flown with the gear pins installed and has done so legally more than once. (Appeal Brief at 6.) But GoJet’s Chief Inspector conceded that those operations were different from those in the instant case because they were under the MEL. (Tr. 122.)

No extraordinary circumstances are present in the instant case that would negate a

finding that GoJet committed a residual violation of Section 91.13(a). A separate sanction, however, is not justified for this residual violation, given that the residual violation is not based on any independent event.

### **C. GoJet's Affirmative Defense**

GoJet's affirmative defense, as discussed above, is that the FAA's rescission of its acceptance of GoJet's voluntary disclosure and its decision to initiate this enforcement action violated the FAA's own published guidance and procedures and was therefore arbitrary and capricious. The ALJ determined that he must uphold the agency unless its actions were arbitrary, capricious, or otherwise unlawful. (Initial Decision at 7.)

The ALJ rejected GoJet's affirmative defense, writing that the agency's guidance states that the comprehensive fix must be satisfactory to the FAA and the agency may rescind its acceptance if it is not satisfied with the fix even after it has issued a letter of correction. (Initial Decision at 7, citing FAA Order No. 8900.1 ¶ 11-10, Exhibit A-10 at 7.) GoJet failed to offer a comprehensive fix that was satisfactory to the FAA. Inspector Cooper offered a comprehensive fix that would add a procedure in the maintenance manual requiring removing the gear pins after replacing a brake, but GoJet refused it. (Initial Decision at 6 n.4.) The ALJ found that the FAA followed its own procedures. (Initial Decision at 7.) He concluded for all these reasons that the FAA's ultimate decision to reject GoJet's VDRP submission and to institute enforcement action was not arbitrary and capricious and rejected GoJet's affirmative defense. (*Id.*)

On appeal, GoJet asserts that it submitted an appropriate comprehensive fix, one that it reasonably believed would resolve the issue that gave rise to this action. However, Inspector Cooper testified persuasively that GoJet's proposed "comprehensive" fix,



which involved merely reminding a single GoJet mechanic about the GMM requirement to make a logbook entry about the gear pins, was insufficient to prevent recurrences of the violations. Inspector Cooper wrote that the comprehensive fix should prevent the same or any other mechanic from forgetting to make the logbook entry and later forgetting to remove the gear pins. GoJet's proposed comprehensive fix fell short.

GoJet asserts that the VDRP required a mutually agreeable comprehensive fix, but actually agency guidance states that the comprehensive fix must be acceptable and satisfactory to *the FAA*. Thus, the VDRP states that one requirement for coverage of an apparent violation is that the regulated entity "has developed or is developing a comprehensive fix ... *satisfactory to the FAA*." (FAA Order No. 8900.1 ¶ 11-5(5), Exhibit A-10 at 2; AC 00-58A ¶ 6(5), Exhibit A-11 at 2; emphasis added.) The VDRP also states that the "collaboration [between the FAA and the regulated entity] helps to ensure that the corrective actions contained in the comprehensive fix are *acceptable to the FAA*." (FAA Order No. 8900.1 ¶ 11-9, Exhibit A-10 at 6; AC 00-58A ¶ 10, Exhibit A-11 at 5; emphasis added.)

GoJet argues that Inspector Cooper never notified GoJet of the decision to rescind the voluntary disclosure and institute an enforcement procedure, and as a result, GoJet was unable to elevate its dispute with Inspector Cooper over the proper comprehensive fix to the next level of FAA management. GoJet is incorrect. Inspector Cooper sent GoJet a letter on January 25, 2008, advising GoJet that the FAA had decided that it would rescind the voluntary disclosure and institute an enforcement procedure if GoJet did not provide a comprehensive fix acceptable to the FAA by February 8, 2008. (Exhibits A-6 and A-7.) GoJet's Chief Inspector admitted that he received the letter from

Inspector Cooper but never replied with a better comprehensive fix. (Tr. 125.) This letter dated January 25, 2008, gave GoJet an opportunity to elevate its dispute with Inspector Cooper over the proper comprehensive fix to the next level of FAA management. At no time, however, did GoJet ask Inspector Cooper or his supervisor for the dispute to be reviewed at the next level. (Tr. 52, 103.)

### **Conclusion**

The ALJ's decision is affirmed. GoJet violated:

- Section 43.13(c) (failing to use the methods prescribed in the maintenance manual when performing maintenance);
- Section 121.153(a)(2) (operating an unairworthy aircraft); and
- Section 91.13 (operating carelessly or recklessly so as to endanger the life or property of another).

On appeal, GoJet has not challenged the civil penalty amount, but only the finding of violations. (*See* the specific bases for GoJet's appeal, Appeal Brief at 2-3.) The ALJ's assessment of an \$18,000 civil penalty for the violations of Sections 43.13(c) and 121.153(a)(2) is affirmed.<sup>14</sup> As a residual violation, the violation of 91.13(a) does not

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<sup>14</sup> Any arguments not specifically discussed have been considered and found to be unworthy of discussion.

warrant a separate sanction.<sup>15</sup>

MICHAEL P. HUERTA  
ACTING ADMINISTRATOR  
Federal Aviation Administration

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<sup>15</sup> This order shall be considered an order assessing civil penalty unless GoJet files a petition for review within 60 days of service of this decision with the U.S. Court of Appeals for the District of Columbia Circuit or the U.S. court of appeals for the circuit in which GoJet resides or has its principal place of business. 14 C.F.R. §§ 13.16(d)(4), 13.233(j)(2), 13.235 (2009). *See* 71 Fed. Reg. 70460 (December 5, 2006) (regarding petitions for review of final agency decisions in civil penalty cases).